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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,297	03/16/2005	Guido Ribi	KAR 008	6615
	7590 06/20/200 tual Property Counsel	8	EXAMINER	
7660 Fay Ave S	Ste H378		MCKINLEY, CHRISTOPHER BRIAN	
La Jolla, CA 92037			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			06/20/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)				
Office Action Summary		10/528,297	RIBI, GUIDO				
		Examiner	Art Unit				
		CHRISTOPHER B. MCKINLEY	3781				
Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the c	orrespondence ad	ldress			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1)☑	Responsive to communication(s) filed on 19 Ma	arch 2008					
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ا ال	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
	closed in accordance with the practice under Z	x parte Quayle, 1955 C.D. 11, 45	3 O.G. 213.				
Dispositi	on of Claims						
4)🛛	Claim(s) <u>1-4,13,17-19 and 22</u> is/are pending in	the application.					
	4a) Of the above claim(s) is/are withdrawn from consideration.						
	5) Claim(s) is/are allowed.						
· · _ ·	Claim(s) <u>1-4,13,17-19 and 22</u> is/are rejected.						
·	Claim(s) is/are objected to.						
•	Claim(s) are subject to restriction and/or	coloction requirement					
اـــا(٥	Claim(s) are subject to restriction and/or	election requirement.					
Applicati	on Papers						
9)□	The specification is objected to by the Examine	r.					
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
,	Applicant may not request that any objection to the						
	Replacement drawing sheet(s) including the correcti			ER 1 121(d)			
11)	The oath or declaration is objected to by the Ex			` '			
''/	The ball of declaration is objected to by the Ex-	animer. Note the attached Office	Action of formal	0-132.			
Priority ι	ınder 35 U.S.C. § 119						
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>							
2)  Notic 3) Inform	t(s) e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date	4)  Interview Summary Paper No(s)/Mail Da 5)  Notice of Informal P 6)  Other:	ite				

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#### **DETAILED ACTION**

## Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 1-4, 13 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Babiol (4,261,475). Babiol discloses the limitations of the claims including a device (figs. 1-3) comprising capsule (1) having closed bottom (1b) and open end (1g), cup-shaped diaphragm (2) having inner (2a) and outer (2b) portions, intermediate position (1c), wherein said diaphragm is stretched (fig. 3), inner diameter (diameter of sealing element 1f), flange (1a), plastic (col. 1, line 41) and a sealing element (1f) physically attached to said closed bottom.

# Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Babiol as described in par. 2 in view of McBride et al. (5,356,021). Babiol as described in par. 2 discloses the limitations of the claims substantially excluding what McBride et al.

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teach, retaining shoulders (fig. 1, inherent with pilfer band 26 and threads) and a tear-off line (serrated connection of pilfer band 26 and capsule) thereby providing a tamper-indicating feature. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify Babiol as described in par. 2 with pilfer band features in order to provide a tamper indicating means.

## Response to Arguments

5. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### Conclusion

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

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7. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Christopher B. McKinley whose telephone number is

(571) 272-3370. The examiner can normally be reached on Monday-Thursday, 7:00

AM - 5:30 PM.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

9. Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. B. M./

Examiner, Art Unit 3781

/Anthony D Stashick/

Anthony D Stashick

Supervisory Patent Examiner, Art Unit 3781